



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No. 210426-0089]**

**RIN 0648-BK26**

### **Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approval of 2021 and 2022 Sector Operations Plans and Allocation of 2021 Northeast Multispecies Annual Catch Entitlements**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule approves sector operations plans and contracts, grants 19 regulatory exemptions for fishing years 2021 and 2022, allocates Northeast multispecies annual catch entitlements to approved sectors for fishing year 2021 including default specifications for seven stocks, and makes regulatory amendments necessary to administer electronic monitoring. This action is intended to allow limited access permit holders to continue to operate or form sectors and to exempt sectors from certain effort control regulations to improve the efficiency and economics of sector vessels. Approval of sector operations plans and contracts is necessary to allocate annual catch entitlements to the sectors in order for sectors to operate.

**DATES:** Sector operations plans and regulatory exemptions are effective May 1, 2021, through April 30, 2023. Northeast multispecies annual catch entitlements for sectors are effective May 1, 2021, through April 30, 2022.

**ADDRESSES:** Copies of each sector's operations plan and contract are available from the NMFS Greater Atlantic Regional Fisheries Office: Contact Claire Fitz-Gerald at

*Claire.Fitz-Gerald@noaa.gov* and Kyle Molton at *Kyle.Molton@noaa.gov*. These documents are also accessible via the GARFO website. To view these documents and the **Federal Register** documents referenced in this rule, you can visit:

*<https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan>*.

**FOR FURTHER INFORMATION CONTACT:** Claire Fitz-Gerald, Fishery Policy Analyst, (978) 281-9255.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Northeast Multispecies Fishery Management Plan (FMP) defines a sector as a group of persons holding limited access Northeast multispecies permits that have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a portion of the total allowable catch (TAC) in order to achieve objectives consistent with applicable FMP goals and objectives. A sector must be comprised of at least three Northeast multispecies permits issued to at least three different persons, none of whom have any common ownership interest in the permits, vessels, or businesses associated with the permits issued to the other two or more persons in that sector. Sectors are self-selecting, meaning each sector can choose its members.

The Northeast multispecies sector management system allocates a portion of the Northeast multispecies stocks to each sector. These annual sector allocations are known as annual catch entitlements (ACE) and are based on the collective fishing history of a sector's members. Sectors may receive allocations of large-mesh Northeast multispecies stocks with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and ocean pout, which are non-allocated species managed under separate effort controls.

ACEs are portions of a stock's annual catch limit (ACL) available to commercial Northeast multispecies vessels. A sector determines how to harvest its ACE.

Because sectors elect to receive an allocation under a quota-based system, the FMP grants sector vessels several "universal" exemptions from the FMP's effort controls. These universal exemptions apply to: Trip limits on allocated stocks; Northeast multispecies days-at-sea (DAS) restrictions; the requirement to use a 6.5-inch (16.5-centimeters (cm)) mesh codend when fishing with selective gear on Georges Bank (GB); and portions of the Gulf of Maine (GOM) Cod Protection Closures. The FMP prohibits sectors from requesting exemptions from permitting restrictions, gear restrictions designed to minimize habitat impacts, and most reporting requirements.

In addition to the approved sectors, there are several state-operated permit banks, which receive allocations based on the history of the permits owned by the states. The final rule implementing Amendment 17 to the FMP allowed a state-operated permit bank to receive an allocation without needing to comply with the administrative and procedural requirements for sectors (77 FR 16942; March 23, 2012). Instead, permit banks are required to submit a list of participating permits to us, as specified in the permit bank's Memorandum of Agreement, to determine the ACE allocated to the permit bank. These allocations may be leased to fishermen enrolled in sectors. State-operated permit banks are no longer approved through the sector approval process, but current state-operated permit banks contribute to the total allocation under the sector system.

We received operations plans and preliminary contracts for fishing years 2021 and 2022 from 16 sectors. The operations plans included 19 exemptions previously requested by sectors, and approved by NMFS, in fishing year 2020. One sector also submitted a new exemption request for fishing year 2021. We have determined that the 16 sector operations plans and contracts that we received, and the 19 previously approved regulatory exemptions requested, are consistent with the FMP's goals and objectives, and

meet sector requirements outlined in the regulations at § 648.87. Consequently, we are approving the 16 sector operations plans, as well as the 19 previously approved regulatory exemptions requested, in this final rule. We are not approving the new sector exemption requested for fishing year 2021. Copies of the operations plans and contracts, and the environmental assessment (EA), are available at: <http://www.regulations.gov> and from NMFS (see **ADDRESSES**).

### **Catch Limits for Fishing Year 2021**

#### *Previously Established Catch Limits*

Last year, Framework 59 to the FMP set fishing year 2021 catch limits for 15 groundfish stocks (85 FR 45794; July 30, 2020). The 2021 catch limits for most stocks remain the same as, or similar, to 2020 limits. Framework 59 did not specify a 2021 catch limit for GOM winter flounder, Southern New England/Mid-Atlantic (SNE/MA) winter flounder, redfish, ocean pout, Atlantic wolffish, Eastern GB cod, or Eastern GB haddock. Eastern GB cod and haddock are management units of the GB cod and GB haddock stocks that NMFS manages jointly with Canada, and the shared quota is set annually.

This year, in Framework 61 to the FMP, the Council adopted new or adjusted fishing year 2021 catch limits for: GB haddock; GB yellowtail flounder; GB winter flounder; GOM winter flounder; SNE/MA winter flounder; redfish; Northern windowpane flounder; Southern windowpane flounder; ocean pout; Atlantic halibut; and Atlantic wolffish. Framework 61 would set 2021 catch limits for the two U.S./Canada stocks (Eastern GB cod and Eastern GB haddock). It would adjust the breakdown of sub-components for GB cod, GOM cod, SNE/MA yellowtail flounder, Cape Cod (CC)/GOM yellowtail flounder, witch flounder, and white hake. Framework 61 also included the exemption for sector vessels to target redfish with codend mesh as small as 5.5 inches (13.97 cm) as a universal exemption. We recently received Framework 61 for review

from the Council and we will not be able to implement Framework 61 measures, if approved, before May 1, 2021.

As a result, the sector and common pool allocations in this rule are based on the 2021 catch limits set in Framework 59 that will be effective on May 1, 2021, and preliminary 2021 fishing year rosters (Table 1). If we approve Framework 61, the 2021 catch limits announced in this rule for these stocks will change when Framework 61 measures become effective.

The Framework 59 fishing year 2021 ACL for GB yellowtail flounder is 95.4 metric tons (mt), which will be in place on May 1. The Council recommended a fishing year 2021 ACL of 63.6 mt for GB yellowtail flounder in Framework 61. This is a 33-percent decrease, which will go into effect after May 1 if Framework 61 is approved. This adjustment is based on the recommendation of the Transboundary Management Guidance Committee, which is the joint U.S./Canada management body that meets annually to recommend shared quotas for the three transboundary stocks. The Council's recommendations will be further discussed in the Framework 61 proposed rule. We are highlighting this change in this rule because the GB yellowtail flounder sector allocations approved in this rule are based on the higher 2021 catch limits previously approved in Framework 59. If the Council's recommended catch limits become final with no changes, the ACE for this stock will be reduced when Framework 61 is implemented.

#### *Default Catch Limits*

This rule also announces default catch limits for GOM winter flounder, SNE/MA winter flounder, redfish, ocean pout, Atlantic wolffish, Eastern GB cod, and Eastern GB haddock. These stocks do not already have a catch limit in place for fishing year 2021. The groundfish regulations implement default catch limits for any stock for which final specifications are not in place by the beginning of the fishing year on May 1. The FMP's default specifications provision sets catch at 35 percent of the previous year's (2020)

catch limits, except in instances where the default catch limit would exceed the Council's recommendation. The fishing year 2021 state waters and other sub-components specified for redfish in Framework 59 exceed the Council's fishing year 2021 redfish recommendation in Framework 61 and, as such, these sub-components will be reduced accordingly. The default catch limits are effective from May 1 through July 31, or until the final rule for Framework 61 is implemented if prior to July 31. To comply with these regulations and minimize impacts on the fishery we are announcing these default specifications. If Framework 61 is not in place on or before July 31, all fishing for these stocks will be prohibited beginning August 1.

**Table 1 -- Northeast Multispecies Catch Limits for 2021**

Stock	Total ACL	Groundfish sub-ACL	Preliminary Sector sub-ACL	Preliminary Common Pool sub-ACL	Recreational sub-ACL	Midwater Trawl Fishery	Scallop Fishery	Small-Mesh Fisheries	State Waters sub-component	Other sub-component
GB Cod*	1,234	1,073	1,041	31					19	142
GOM Cod*	523	468	267	9	193				48	7
GB Haddock*	72,699	70,892	69,465	1,428		1,424			0	383
GOM Haddock*	15,843	15,575	10,022	258	5,295	156			56	56
GB Yellowtail Flounder*	116	95	92	3			19	2	0	0
SNE/MA Yellowtail Flounder*	21	15	12	3			2		0	4
CC/GOM Yellowtail Flounder*	787	688	656	32					58	41
American Plaice*	2,740	2,682	2,611	71					29	29
Witch Flounder*	1,414	1,310	1,275	35					44	59
GB Winter Flounder*	545	522	502	21					0	22
GOM Winter Flounder*	151	100	95	5					48	2
SNE/MA Winter Flounder*	245	189	166	22					13	43
Redfish*	3,973	3,931	3,880	51					0	0
White Hake*	2,041	2,019	1,995	24					11	11
Pollock*	21,047	19,282	19,092	190					882	882
N. Windowpane Flounder*	55	38	na	38			12		1	5
S. Windowpane Flounder*	412	48	na	48			143		26	196
Ocean Pout*	42	32	na	32					0	9
Atlantic Halibut*	102	77	na	77					21	4
Atlantic Wolffish	29	29	na	29					0	0

\*These catch limits are based on fishing year 2021 Framework 59 and/or default specifications, and will be replaced when the final rule for Framework 61 becomes effective, if approved.

## **Sector Allocations**

This rule allocates ACE to sectors based on the preliminary fishing year 2021 sector rosters and the 2021 catch limits established in Framework 59 and default specifications, as shown in Table 1 above. Any permits that change ownership after the enrollment deadline established by the Regional Administrator (March 8 for fishing year 2021) retain the ability to join a sector through April 30, 2021. All permit holders who have joined a sector for fishing year 2021 have until April 30, 2021, to withdraw and elect to fish in the common pool, although sectors may specify a more restrictive withdrawal date for their members. As a result, the total permits enrolled in sectors for fishing year 2021 could change from the preliminary rosters, although such changes are expected to be minimal based on past fishing years. For fishing year 2022, we will set similar roster deadlines, notify permit holders of the fishing year 2022 deadlines, and allow permit holders to change sectors separate from the annual sector operations plans approval process.

We calculate a sector's allocation for each stock by summing its members' potential sector contributions (PSC) for a stock and then multiplying that total percentage by the available commercial sub-ACL for that stock. Table 2 shows the preliminary total fishing year 2021 PSCs for each sector for fishing year 2021. Tables 3 and 4 show the initial allocations that each sector is allocated, in pounds and metric tons, respectively, for fishing year 2021 based on their preliminary fishing year 2021 rosters and the fishing year 2021 Framework 59 and default specifications. At the start of the 2021 fishing year, we provide final allocations, to the nearest pound, to each sector based on their final May 1 rosters. We use these final allocations, along with later adjustments for ACE transfers, reductions for overages, or increases for carryover from fishing year 2020, to monitor sector catch. We have included the preliminary common pool sub-ACLs in tables 2



through 4 for comparison. These tables do not represent the final allocations for the 2021 fishing year.

We do not assign each permit separate PSCs for Eastern GB cod or Eastern GB haddock; instead, we assign each permit a PSC for the GB cod stock and GB haddock stock. Each sector's GB cod and GB haddock allocations are then divided into an Eastern ACE and a Western ACE, based on each sector's percentage of the GB cod and GB haddock ACLs. For example, if a sector is allocated 4 percent of the GB cod ACL and 6 percent of the GB haddock ACL, the sector is allocated 4 percent of the commercial Eastern U.S./Canada Area GB cod TAC and 6 percent of the commercial Eastern U.S./Canada Area GB haddock TAC as its Eastern GB cod and haddock ACEs. These amounts are then subtracted from the sector's overall GB cod and haddock allocations to determine its Western GB cod and haddock ACEs. A sector may only harvest its Eastern GB cod and haddock ACEs in the Eastern U.S./Canada Area, but may "convert," or transfer, its Eastern GB cod or haddock allocation into Western GB allocation and fish that converted ACE outside the Eastern GB area.

At the start of fishing year 2021, we may withhold 20 percent of each sector's fishing year 2021 allocation until we finalize fishing year 2020 catch information. We expect to finalize 2020 catch information in summer 2021. We allow sectors to transfer fishing year 2020 ACE for 2 weeks upon our completion of year-end catch accounting to reduce or eliminate any fishing year 2020 overages. If necessary, we reduce any sector's fishing year 2021 allocation to account for a remaining overage in fishing year 2020. Each year of the operations plans, we notify the Council and sector managers of this deadline in writing and announce our final ACE determination on our website at: [https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/groundfish\\_catch\\_accounting](https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/groundfish_catch_accounting).

**Table 2 -- Preliminary Cumulative PSC (percentage) Each Sector Would Receive by Stock for Fishing Year 2021\***

Sector Name	MRI Count	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder
Fixed Gear Sector	66	12.91201525	0.69970954	1.96267839	0.18099559	0.01093447	0.19005237	1.70866378	0.50303247	1.09848991	0.02003390	8.02535090	1.02535090
Maine Coast Community Sector	98	2.46438576	14.12291604	3.41756399	11.05917517	2.62554515	2.56810667	4.98616308	13.90614469	11.13374795	1.20529725	5.56500829	2.0529725
Maine Permit Bank	11	0.13361161	1.15527371	0.04432773	1.12456784	0.01377701	0.03180705	0.31794656	1.16407704	0.72688466	0.00021715	0.42663133	0.00021715
Moonsusser Sector	48	11.95940509	6.22441724	3.83051665	3.68870155	1.22307304	0.85547320	3.01233271	0.85789918	1.81231812	0.94550207	2.84735133	2.84735133
NEFS 2	128	6.50411103	26.71426695	10.68698041	22.24964932	1.90743001	1.65680516	25.11745967	11.19111752	14.64457019	3.21718005	24.58414243	4.0529725
NEFS 4	58	7.40278746	11.14715279	5.81741902	8.87488520	2.16178984	2.26424835	6.38868785	9.51519683	8.85678156	0.69256896	7.43025795	0.69256896
NEFS 5	25	0.49539649	0.32176491	0.81722278	0.11414108	1.27625199	20.09778839	0.94754372	0.48057213	0.69952929	0.43644335	0.84397461	12.0529725
NEFS 6	23	3.11400760	2.92154892	3.58633261	4.39667574	3.30346794	5.11479613	4.18474608	4.55131759	6.00691065	1.72190154	4.75208259	1.9529725
NEFS 7	7	0.46305698	0.02291312	0.39735538	0.01682579	1.30011492	1.03798542	0.05122608	0.25069186	0.25401118	0.30163925	0.05425034	0.05425034
NEFS 8	52	9.74740165	2.36155604	9.19478219	5.08770917	22.13250390	7.55578310	6.88682924	7.61264285	6.36103710	29.74215982	3.95221384	10.0529725
NEFS 10	29	0.52585353	2.47139968	0.17673209	1.28210628	0.00114846	0.54787117	4.28071114	1.08110214	2.04602336	0.01083157	9.10605344	0.01083157
NEFS 11	46	0.39658325	11.79843505	0.03473420	2.82822092	0.00149117	0.01148641	2.44380248	1.59139809	1.60534702	0.00312600	2.05385292	0.00312600
NEFS 12	22	0.62936609	3.13340099	0.09375956	1.08960389	0.00042969	0.03423699	8.58774919	0.79724602	0.62375273	0.00060545	13.19945544	0.00060545
NEFS 13	70	12.65390016	0.80182096	21.35179272	0.97739231	36.32284531	23.98638456	7.00125506	8.74395988	9.65967443	19.43367782	2.32792940	17.0529725
New Hampshire Permit Bank	4	0.00082216	1.14551884	0.00003406	0.03234889	0.00002026	0.00001788	0.02180780	0.02847787	0.00615970	0.00000324	0.06070545	0.00000324
Sustainable Harvest Sector 1	30	5.57899029	2.98581817	7.55457484	9.03142800	3.19074027	1.07671984	2.83579743	11.36677073	9.28674073	7.82278738	2.56491779	3.0529725
Sustainable Harvest Sector 2	28	3.67707499	1.67621458	1.80758272	1.49630004	5.08889227	4.55761667	5.67454721	2.88513497	2.46063067	8.67082704	4.21283994	8.0529725
Sustainable Harvest Sector 3	63	18.02359057	6.54375460	26.93205684	22.87530816	14.88480093	8.95238546	11.40874432	20.80260202	20.03396152	21.25890798	3.46492030	22.0529725
Common Pool	501	3.31764005	3.75211789	2.29355383	3.59396507	4.55474335	19.46043519	4.14398660	2.67061614	2.68342921	4.51629019	4.52806171	11.0529725

\* The data in this table are based on preliminary fishing year 2021 sector rosters.

**Table 3 -- Preliminary ACE (in 1,000 lbs), by Stock, for Each Sector for Fishing Year 2021\*\*^**

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellow tail Flounder	SNE/M A Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	S V I
FGS	19	287	4	245	2,822	41	0	0	26	30	32	0	18	
MCCS	4	55	86	427	4,914	2,507	6	1	76	822	322	14	12	
MPB	0	3	7	6	64	255	0	0	5	69	21	0	1	
Mooncusser	17	265	38	479	5,508	836	3	0	46	51	52	11	6	
NEFS 2	9	144	162	1,336	15,367	5,043	4	1	381	662	423	37	54	
NEFS 4	11	164	68	727	8,365	2,012	5	1	97	563	256	8	16	
NEFS 5	1	11	2	102	1,175	26	3	7	14	28	20	5	2	
NEFS 6	5	69	18	448	5,157	997	7	2	63	269	174	20	11	
NEFS 7	1	10	0	50	571	4	3	0	1	15	7	3	0	
NEFS 8	14	216	14	1,149	13,221	1,153	47	3	104	450	184	343	9	
NEFS 10	1	12	15	22	254	291	0	0	65	64	59	0	20	
NEFS 11	1	9	72	4	50	641	0	0	37	94	46	0	5	
NEFS 12	1	14	19	12	135	247	0	0	130	47	18	0	29	
NEFS 13	18	281	5	2,669	30,702	222	76	8	106	517	279	224	5	
NHPB	0	0	7	0	0	7	0	0	0	2	0	0	0	
SHS 1	8	124	18	944	10,863	2,047	7	0	43	672	268	90	6	
SHS 2	5	82	10	226	2,599	339	11	2	86	171	71	100	9	
SHS 3	26	400	40	3,367	38,726	5,185	31	3	173	1,230	579	245	8	
Common Pool	5	74	23	287	3,298	815	10	7	63	158	78	52	10	
Sector Total	141	2,146	584	12,214	140,493	21,851	201	27	1,454	5,755	2,811	1,100	211	

\* The data in this table are based on preliminary fishing year 2021 sector rosters.

# Numbers are rounded to the nearest thousand pounds. In some cases, this table shows an allocation of 0, but that sector may be allocated a small amount of that stock in tens or hundreds pounds.

^ The data in the table represent the preliminary total allocations to each sector. Final allocations will be determined using final fishing year 2021 rosters.

**Table 4 -- Preliminary ACE (in metric tons), by Stock, for Each Sector for Fishing Year 2021\*\*^**

Sector Name	GB Cod East	GB Cod West	GO M Cod	GB Had dock East	GB Hadd ock West	GOM Haddo ck	GB Yello wtail Floun der	SNE/ MA Yello wtail Floun der	CC/ GO M Yello wtail Flou nder	Plaice	Witch Flou nder	GB Wint er Flou nder	GO M Wint er Flou nder	SNE/ MA Wint er Flou nder	Redf ish	Whit e Hake	Polloc k
FGS	9	130	2	111	1,280	19	0	0	12	13	14	0	8	2	22	22	658
MCCS	2	25	39	194	2,229	1,137	3	0	34	373	146	6	6	4	380	286	2,574
MPB	0	1	3	3	29	116	0	0	2	31	10	0	0	0	32	33	327
Mooncusser	8	120	17	217	2,498	379	1	0	21	23	24	5	3	5	187	215	2,030
NEFS 2	4	65	74	606	6,970	2,287	2	0	173	300	192	17	25	8	597	181	2,803
NEFS 4	5	75	31	330	3,794	912	2	0	44	255	116	4	7	2	262	167	1,324
NEFS 5	0	5	1	46	533	12	1	3	7	13	9	2	1	23	1	2	9
NEFS 6	2	31	8	203	2,339	452	3	1	29	122	79	9	5	4	268	91	707
NEFS 7	0	5	0	23	259	2	1	0	0	7	3	2	0	0	6	2	35
NEFS 8	6	98	7	521	5,997	523	21	1	47	204	83	155	4	19	209	91	772
NEFS 10	0	5	7	10	115	132	0	0	29	29	27	0	9	1	13	13	147
NEFS 11	0	4	32	2	23	291	0	0	17	43	21	0	2	0	76	90	1,711
NEFS 12	0	6	9	5	61	112	0	0	59	21	8	0	13	0	9	6	150
NEFS 13	8	127	2	1,211	13,926	100	35	4	48	235	127	102	2	33	174	46	522
NHPB	0	0	3	0	0	3	0	0	0	1	0	0	0	0	1	2	21
SHS 1	4	56	8	428	4,927	929	3	0	20	305	122	41	3	6	324	256	1,246
SHS 2	2	37	5	102	1,179	154	5	1	39	77	32	45	4	16	45	38	247
SHS 3	12	181	18	1,527	17,566	2,352	14	1	78	558	262	111	3	43	1,261	439	3,668
Common Pool	2	33	10	130	1,496	369	4	3	29	72	35	24	5	23	63	39	331
Sector Total	64	973	265	5,540	63,726	9,911	91	12	660	2,611	1,275	499	96	166	3,868	1,980	18,951

\* The data in this table are based on preliminary fishing year 2021 sector rosters.

# Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

^ The data in the table represent the preliminary total allocations to each sector. Final allocations will be determined using final fishing year 2021 rosters.

## **Announcement of our Electronic Monitoring Determination**

Regulations implementing the sector program for the Northeast multispecies fishery under Amendment 16 to the FMP allow the use of electronic monitoring (EM) to meet sector monitoring requirements provided that the agency deems it sufficient for a specific gear type and area fished. Using the process and authority granted to us in Amendment 16 to the Northeast Multispecies FMP, and as described in regulations at § 648.87(b)(1)(v)(B), we determined that the EM audit model is sufficient for use in place of at-sea monitoring (ASM) and announced our determination in the proposed rule to approve sector operations plans for fishing years 2021 and 2022 (86 FR 16686; March 31, 2021). The proposed rule described our rationale, as well as the operational standards and requirements of an EM audit model program that meets sector monitoring requirements. The full details were included in the proposed rule and are not repeated here. This final rule approves amendments to the regulations, implemented under our section 305(d) authority in the Magnuson-Stevens Act, to make changes necessary to carry out the FMP. These adjustments clarify the use of EM for sector monitoring as described in the regulations at § 648.87 and ensure the FMP is implemented in accordance with the Magnuson-Stevens Act. We are implementing these changes in conjunction with the sector rule for expediency purposes.

## **Sector Operations Plans and Contracts**

We are approving 16 sector operations plans and contracts for fishing years 2021 and 2022. All 16 sectors were active in fishing years 2019 and 2020. In order to approve a sector's operations plan for fishing years 2021 and 2022, we consider whether a sector's plan is consistent with regulatory requirements and FMP objectives, and whether it has been compliant with reporting requirements from previous years, including the year-end reporting requirements found at § 648.87(b)(1)(vi)(C). Approved operations plans contain the rules under which each sector will fish, and also provide the legal

contract that binds each member to the sector for the length of the sector's operations plan. Each sector's operations plan, and each sector's members, must comply with the regulations governing sectors, found at § 648.87. In addition, each sector must conduct fishing activities as detailed in its approved operations plan.

Participating vessels are required to comply with all pertinent Federal fishing regulations, except as specifically exempted in the letter of authorization (LOA) issued by the Regional Administrator, which details any approved sector exemptions from the regulations. If, during a fishing year, or between fishing years 2021 and 2022, a sector requests an exemption that we have already granted, or proposes a change to administrative provisions, we may amend the sector operations plans. Should any such amendments require modifications to LOAs, we will include these changes in updated LOAs and provide them to the appropriate sectors.

As in previous years, we retain the right to revoke exemptions in-season if: We determine that the exemption jeopardizes management measures, FMP objectives, or rebuilding efforts; the exemption results in unforeseen negative impacts on other managed fish stocks, habitat, or protected resources; the exemption causes enforcement concerns; catch from trips using the exemption cannot be adequately monitored; or a sector is not meeting certain administrative or operational requirements. If it becomes necessary to revoke an exemption, we will do so through a process consistent with the Administrative Procedure Act.

Each sector is required to ensure that it does not exceed its ACE during the fishing year. Sector vessels are required to retain all legal-sized allocated Northeast multispecies stocks, unless a sector is granted an exemption allowing its member vessels to discard legal-sized unmarketable fish at sea. Catch (defined as landings and discards) of all allocated Northeast multispecies stocks by a sector's vessels count against the sector's allocation. Groundfish catch from a sector trip targeting non-groundfish species

will be deducted from the sector's ACE because these are groundfish trips using gear capable of catching groundfish. Catch from a non-sector trip in an exempted fishery does not count against a sector's allocation and is assigned to a separate ACL sub-component to account for any groundfish bycatch that occurs in non-groundfish fisheries.

Each sector operations plan submitted for fishing years 2021 and 2022 states that the sector may withhold an initial reserve from the sector's ACE sub-allocation to each individual member to prevent the sector from exceeding its ACE. A sector and sector members can be held jointly and severally liable for ACE overages, discarding legal-sized fish, and/or misreporting catch (landings or discards). Each sector contract provides procedures for sector enforcement of its rules, explains sector monitoring and reporting requirements, provides sector managers with the authority to issue stop fishing orders to sector members who violate provisions of the operations plan and contract, and presents a schedule of penalties that managers may levy on members for sector plan violations.

Sectors are required to monitor their allocations and catch. To help ensure that a sector does not exceed its ACE, each sector operations plan explains sector monitoring and reporting requirements, including a requirement to submit weekly catch reports to us. If a sector reaches an ACE threshold (specified in the operations plan), the sector must provide us with sector allocation usage reports on a daily basis. Once a sector's allocation for a particular stock is caught, that sector is required to cease all sector fishing operations in that stock area until it acquires more ACE, likely by an ACE transfer between sectors. Within 60 days of when we complete year-end catch accounting, each sector is required to submit an annual report detailing the sector's catch (landings and discards), sector enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts of each sector.

### *Industry-Funded Monitoring Programs*

Sectors are responsible for designing, implementing, and funding a monitoring program that will provide the level of ASM coverage specified by NMFS for that year. We are required to determine a level of ASM coverage using a process described in Framework 55 (81 FR 26412; May 2, 2016) that provides a reliable estimate of overall catch by sectors needed for monitoring ACEs and ACLs while minimizing the cost burden to sectors and NMFS to the extent practicable. Sectors are responsible for the at-sea portion of costs associated with the sector's monitoring program(s), even in years when reimbursement funds are available.

In fishing years 2010 and 2011, we funded an ASM program with a target ASM coverage level of 30 percent of all trips. In addition, we provided 8-percent observer coverage through the Northeast Fishery Observer Program (NEFOP), which helps to support the Standardized Bycatch Reporting Methodology (SBRM) and stock assessments. This resulted in an overall target coverage level of 38 percent for fishing years 2010 and 2011, from the combined ASM and NEFOP. Beginning in fishing year 2012, we have conducted an annual analysis to determine the total target coverage level. Table 5 depicts the annual target coverage levels. Industry has been required to pay for their ASM coverage costs since 2012, while we continued to fund NEFOP coverage. However, we were able to fund the industry's portion of ASM costs and NEFOP coverage in fishing years 2012 through most of 2015. Industry paid for their portion of the ASM program beginning in March 2016. In June 2016, after determining that the SBRM monitoring program could be fully funded with additional funding remaining, we announced that we had funds available to offset some of industry's costs of the groundfish ASM program in 2016. We distributed funds held by the Atlantic States Marine Fisheries Commission in a grant that provided for reimbursing sectors for 85 percent of their ASM costs for 10 months of the fishing year. In fishing year 2017, using



leftover funds from the 2016 grant, sectors were reimbursed for 60 percent of industry costs in fishing year 2017. Fishing effort was lower than expected in the first few months of the fishing year, and sectors were ultimately retroactively reimbursed an additional estimated 25 percent of industry’s 2017 costs, which exhausted the remaining available SBRM funds. In fiscal years 2018, 2019, 2020, and 2021, Congress appropriated \$10.3 million for groundfish ASM. These funds were used to fully reimburse industry costs in fishing years 2018, 2019, and 2020. Although the exact costs of groundfish monitoring for fishing year 2021 are not known at this time, we expect there will be sufficient funds to fully reimburse industry’s costs for ASM and EM based on our experience in previous fishing years.

**Table 5 -- Historic Target Coverage Level for Monitoring**

Fishing Year	Total Target Coverage Level (percent)	ASM Target Coverage Level (percent)	NEFOP Target Coverage Level (percent)
2010	38	30	8
2011	38	30	8
2012	25	17	8
2013	22	14	8
2014	26	18	8
2015	16	12	4
2016	14	10	4
2017	16	8	8
2018	15	10	5
2019	31	*	*
2020	40	*	*

\*Beginning in fishing year 2019, assignment of NEFOP coverage changed in a way that no longer provided a single coverage target across all sectors. As a result, the total target coverage level was no longer partitioned into fixed ASM and NEFOP target coverage levels.

On March 20, 2020, we issued a fleet-wide observer waiver in response to local travel restrictions and limits on gatherings. During this time, we worked with monitoring service providers to develop observer redeployment plans, finalize internal policies to promote safe and effective redeployment, and conduct outreach to industry. We redeployed observers on August 14, 2020. A vessel receives a waiver if an observer or ASM is not available for deployment; or the observer provider cannot meet the safety

protocols imposed by a state on the commercial fishing crew or by the vessel owner or operator on the crew. Service provider companies have experienced significant staff attrition this year as a result of the limited amount of work available, and will need to hire additional staff to meet future specified coverage levels. Given the circumstances, we do not expect sectors to meet the 40-percent target coverage level in fishing year 2020. We expect to work with sectors and service provider companies through the remainder of the year to increase coverage levels to the extent possible, and to ensure they meet the specified coverage level when normal operations resume.

For fishing year 2021, sector vessels may choose to use either ASM or the EM audit model to meet monitoring requirements, provided that the sector has a corresponding monitoring program approved as part of its operations plan. On January 26, 2021, we announced that the total target ASM coverage level is 40 percent for fishing year 2021. Vessels that choose to use ASM to meet monitoring requirements will have a target coverage level of 40 percent for all sector groundfish trips. Vessels that choose to use EM to meet monitoring coverage requirements must use cameras and adhere to catch handling protocols as described in their vessel monitoring plans for all groundfish trips. Only a subset of the submitted trips will be selected for review to monitor groundfish discards for catch accounting. For fishing year 2021, NMFS will randomly select 50 percent of trips for review by a third-party service provider. A subset of the selected trips will undergo a secondary review by NMFS to monitor the third-party service provider's performance. The vessel owner or operator and the third-party service provider must provide the EM data for any given trip to NMFS, and its authorized officers and designees, upon request including, but not limited to, trips selected for secondary review. The fishing year 2022 selection rate for third-party review will be announced during fishing year 2021. The selection rate may vary annually based on vessel performance

and less than 100 percent of trips would be reviewed, consistent with regulations at 8 648.87(b)(1)(v)(B)(I).

### *Industry-Funded Monitoring Programs*

The operations plans submitted by sectors include industry-funded monitoring plans for fishing year 2021. As in previous years, we gave sectors the option to design their own monitoring program(s) in compliance with regulations or elect to adopt the NMFS-designed ASM and/or EM audit model program(s). In the event that we cannot approve a proposed monitoring program, we asked all sectors to include an option to select a current NMFS-designed monitoring program as a fail-safe.

All active sectors submitted an ASM plan as part of their draft operations plans. Sectors that operate only as permit banks, and explicitly prohibit fishing in their operations plans, are not required to include provisions for an ASM program. Similar to previous years, some sectors chose to use the NMFS-designed ASM program while others proposed programs of their own design. The NMFS-designed ASM program is the same program that we have used in previous fishing years. Sector-designed ASM programs for fishing years 2021 and 2022 were similar to those approved in past years. We reviewed all sector-proposed ASM programs for consistency with ASM requirements.

Sustainable Harvest Sectors 1, 2, and 3; the GB Cod Fixed Gear Sector, the Maine Coast Community Sector, and Northeast Fishery Sectors (NEFS) 5, 10, 11, and 13 will use the NMFS-designed ASM program. NEFS 2, 6, 7, 8, and 12 will use a sector-designed ASM program, which states that they will: Contract with a NMFS-approved ASM provider; meet the specified coverage level; and utilize the Pre-Trip Notification System for random selection of monitored trips and notification to providers. These ASM programs also include additional protocols for ASM coverage waivers, incident reporting, and safety requirements for their sector managers and members. We are

approving these programs because they are consistent with the goals and objectives of ASM and regulatory requirements.

Seven sectors also submitted an EM plan as part of their draft operations plans. Of these sectors, six sectors, Sustainable Harvest Sectors 1, 2, and 3; the GB Cod Fixed Gear Sector, the Maine Coast Community Sector, and NEFS 5, chose to use the NMFS-designed EM audit model program. An additional sector, NEFS 10, subsequently submitted a request to amend its operations plan to include the NMFS-designed EM audit model program. We are approving this program for these sectors, including NEFS 10, because it is consistent with goals and objectives of monitoring and regulatory requirements.

One sector, NEFS 2, proposed an EM program of its own design. The proposed program maintained key elements of the NMFS-designed EM audit model program as the basis for its proposed EM program with modifications. We are approving NEFS 2's proposed program, which states that it will: Contract with an approved service provider; utilize PTNS as required; run cameras on 100 percent of groundfish trips for EM vessels; and trips will be audited at a rate of 50 percent. NEFS 2's program also establishes internal protocols and controls for the sector to manage its member vessels' participation in EM.

### **Previously Granted Exemptions for Fishing Years 2021 and 2022**

#### *Previously Granted Exemptions Granted for Fishing Years 2021 and 2022 (1-19)*

We are granting exemptions from the following requirements for fishing years 2021 and 2022, all of which have been requested and granted in previous years:

- (1) 120-day block out of the fishery required for Day gillnet vessels;
- (2) 20-day spawning block out of the fishery required for all vessels;
- (3) Limits on the number of gillnets for Day gillnet vessels outside the GOM;
- (4) Prohibition on a vessel hauling another vessel's gillnet gear;

(5) Limits on the number of gillnets that may be hauled on GB when fishing under a Northeast multispecies/monkfish DAS;

(6) Limits on the number of hooks that may be fished;

(7) DAS Leasing Program length and horsepower restrictions;

(8) Prohibition on discarding;

(9) Gear requirements in the Eastern U.S./Canada Management Area;

(10) Prohibition on a vessel hauling another vessel's hook gear;

(11) The requirement to declare an intent to fish in the Eastern U.S./Canada Special Access Program (SAP) and the Closed Area (CA) II Yellowtail Flounder/Haddock SAP prior to leaving the dock;

(12) Seasonal restrictions for the Eastern U.S./Canada Haddock SAP;

(13) Seasonal restrictions for the CA II Yellowtail Flounder/Haddock SAP; (14) sampling exemption;

(15) 6.5-inch minimum mesh size requirement for trawl nets to allow a 5.5-inch codend on directed redfish trips;

(16) Prohibition on combining small-mesh exempted fishery and sector trips in SNE;

(17) Extra-large mesh requirement to target dogfish on trips excluded from ASM in SNE and Inshore GB;

(18) Requirement that Handgear A vessels carry a Vessel Monitoring System (VMS) unit when fishing in a single broad stock area (BSA); and

(19) Limits on the number of gillnets for Day gillnet vessels in the GOM.

A detailed description of the previously granted exemptions and supporting rationale can be found in the applicable final rules identified in Table 6 below.

**Table 6 -- Exemptions from Previous Fishing Years that Are Granted in Fishing Years 2021 and 2022**

Exemptions	Rulemaking	Date of Publication	Citation
1-2, 4-9	Fishing Year 2011 Sector Operations Final Rule	April 25, 2011	76 FR 23076
10-11	Fishing Year 2012 Sector Operations Final Rule	May 2, 2012	77 FR 26129
12-14	Fishing Year 2013 Sector Operations Interim Final Rule	May 2, 2013	78 FR 25591
3, 15-16	Fishing Years 2015-2016 Sector Operations Final Rule	May 1, 2015	80 FR 25143
17	Framework 55 Final Rule	May 2, 2016	81 FR 26412
18	Amendment 18 Final Rule	April 21, 2017	82 FR 18706
19	Fishing Year 2018 Sector Operations Final Rule	May 1, 2018	83 FR 18965
Northeast Multispecies <b>Federal Register</b> documents can be found at <a href="https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan">https://www.fisheries.noaa.gov/management-plan/northeast-multispecies-management-plan</a> .			

## **New Exemption Requests We Will Not Approve for Fishing Year 2021**

### *Minimum Mesh Size for Gillnets Fished in Georges Bank*

One sector requested a new exemption for fishing year 2021 to allow sector vessels to use 6.0-inch (15.2-cm) mesh size to target groundfish in the GB BSA. We denied this request because we are concerned that allowing the use of gillnets smaller than the 6.5-inch (16.5-cm) minimum mesh size may have an impact on GB cod, given that this stock is overfished and overfishing is occurring, and there is limited data available to evaluate this exemption request. In addition, changes in the location and intensity of gillnet fishing may have impacts on protected resources, particularly North Atlantic right whales, which are critically endangered and are present in the requested area during certain times of year. We may reevaluate this exemption request in a future action, should further information become available. Additional details on the exemption request, and our rationale for denying it, can be found in the proposed rule to approve fishing years 2021 and 2022 sector operations plans (86 FR 16686; March 31, 2021).

### **Additional Sector Operations Plan Provisions**

### *Inshore GOM Restrictions*

Several sectors proposed an operations plan provision to limit and more accurately document a vessel's behavior when fishing in an area they define as the inshore portion of the GOM BSA, or the area to the west of 70° 15' W. long. As in fishing years 2019 and 2020, we are approving this provision, but a sector may elect to remove this provision in the final version of its operations plan, and it is not a requirement under NMFS regulations.

Under this provision, a vessel that is carrying an observer or ASM would remain free to fish in all areas, including the inshore GOM area, without restriction. If a vessel is not carrying an observer or ASM and fishes any part of its trip in the GOM west of 70° 15' W. long., the vessel would be prohibited from fishing outside of the GOM BSA. Also, if a vessel is not carrying an observer or ASM and fishes any part of its trip outside the GOM BSA, this provision would prohibit a vessel from fishing west of 70° 15' W. long. within the GOM BSA. The approved provision includes a requirement that a vessel declare whether it intends to fish in the inshore GOM area through the trip start hail using its VMS unit prior to departure. We provide sector managers with the ability to monitor this provision through the Sector Information Management Module, a website where we also provide roster, trip, discard, and observer information to sector managers. A sector vessel may use a federally-funded NEFOP observer or ASM on these trips because we believe this option will not create bias in discard estimates, as fishing behavior is expected to be consistent with the standard fishery requirements such as minimum gear and fish sizes as a result of exercising this option.

### *Prohibition on a Vessel Hauling Another Vessel's Trap Gear to Target Groundfish*

Several sectors have requested a provision to allow a vessel to haul another vessel's fish trap gear, similar to the current exemptions that allow a vessel to haul another vessel's gillnet gear or hook gear. These exemptions have generally been

referred to as “community” gear exemptions. Regulations at § 648.84(a) require a vessel to mark all bottom-tending fixed gear, which includes fish trap gear used to target groundfish. This requirement helps protect against illegal hauling of gear by vessels that do not own the gear and are not authorized to tend it. To facilitate enforcement of § 648.84(a) and use of this exemption, we are requiring each vessel authorized to haul another’s gillnet gear to tag that gear, similar to how this sector operations plan provision was implemented in fishing years 2014 through 2020. This allows one vessel to deploy the trap gear and another vessel to haul the trap gear, provided both vessels tag the gear prior to deployment. This requirement is included in the sector’s operations plan to provide the opportunity for the sector to monitor the use of this provision and facilitate the Office of Law Enforcement and the U.S. Coast Guard’s enforcement of the marking requirement. We do not expect this provision to increase effort or the amount of fish trap gear used. Instead, we expect that it will provide an efficiency and would allow a vessel to retrieve gear as a convenience.

### **Comments and Responses**

We received a total of two comments: One from the Northeast Sector Service Network (NESSN), and one from a member of the public. Only comments related to the proposed measures are addressed below.

#### *Sector Operations Plans and ACE Allocations*

*Comment 1:* The comment submitted by a member of the public pertains to quota allocations. The commenter states that quotas are too high and lead to overfishing, and that all quotas should be reduced by 50 percent.

*Response:* This rulemaking does not set fishing year 2021 quotas for the groundfish fishery. This action approves sector operations plans for fishing years 2021 and 2022; allocates preliminary ACE to groundfish sectors based on ACLs (*i.e.*, quotas) developed by the New England Fishery Management Council and implemented in



Framework 59 to the FMP; announces default specifications for seven groundfish stocks as required by regulation; and amends the regulations in order to implement EM. The ACLs are set to prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best scientific information available. Fishing year 2021 quota allocations are developed through a separate rulemaking.

*Comment 2:* NESSN supports approval of fishing years 2021 and 2022 sector operations plans for NEFS 2, 4, 6, 7, 8, and 12. NESSN did not comment on the approval of the other sectors' operations plans.

*Response:* This rule approves fishing years 2021 and 2022 sector operations plans for NEFS 2, 4, 6, 7, 8 and 12.

*Comment 3:* NESSN supports approval of all proposed exemptions.

*Response:* This rule approves 19 regulatory exemptions that were previously approved for fishing year 2020. This rule does not approve the new exemption requested by a sector for fishing year 2021 to allow sector vessels to use gillnets as small as 6.0-inches (15.2-cm) to target haddock in the GB BSA. The reason for NMFS's disapproval is provided in the discussion of exemptions above and is not repeated here.

*Comment 4:* NESSN encourages NMFS to implement Framework 61 to the FMP prior to July 31, when the default specifications expire.

*Response:* NMFS received the preliminary submission of Framework 61 from the New England Fishery Management Council for review in late March. We will make every effort to complete the rulemaking process as quickly as possible and prior to July 31, when the default regulations are set to expire.

*Announcement of our Electronic Monitoring Determination*

*Comment 5:* NESSN supports approval of the EM audit model program developed and submitted by NEFS 2 because it provides the sector with additional control and oversight.

*Response:* This rule approves the EM audit model program proposed by NEFS 2. NMFS' EM program standards did not specify what type of control and oversight sectors should exert over their membership. This is consistent with the general structure of the sector system, which places this type of self-governance and management in the sectors' purview, as opposed to NMFS.

*Comment 6:* NESSN commented on the implementation details of the EM audit model program, including suggestions for different approaches to follow when expanding the maximized retention EM program in the future. NESSN's suggestions are intended to minimize disruptions to sector planning and operations, given both NMFS' and sectors' administrative workload.

*Response:* We are committed to working with all sectors that chose to include EM plans in their operations plans, and those sectors interested in it in the future, to ensure that we improve the overall implementation of EM in the fishery over time. Implementation of this program will improve each year, and we intend to work closely with sectors to improve and expand EM, including the maximized retention EM program.

### **Changes from the Proposed Rule**

In the proposed rule, we considered approving EM plans submitted by seven sectors: Sustainable Harvest Sectors 1, 2, and 3; the GB Cod Fixed Gear Sector; the Maine Coast Community Sector; NEFS 2; and NEFS 5. However, NEFS 10 subsequently submitted a request to amend its operations plan to include the NMFS-designed EM audit model program. We approved this request because the NMFS-designed EM audit model program is consistent with the goals and objectives of monitoring and regulatory requirements. As a result, this final rule approves EM plans

for eight sectors. Additional sectors may request an amendment to their operations plans to include EM during the 2021 or 2022 fishing year, if desired.

The allocations published in the proposed rule were based on final fishing year 2020 sector rosters because we had not yet received preliminary rosters for the 2021 fishing year. The deadline for preliminary sector roster submissions for fishing year 2021 was March 8, 2021. The ACE allocated to each sector has been updated in the final rule to reflect preliminary sector enrollment for the 2021 fishing year.

There are no other changes from the proposed measures.

### **Classification**

NMFS is issuing this rule pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act. This action amends the regulations to clearly implement the use of EM to meet sector monitoring requirements as allowed by the Northeast Multispecies FMP. These adjustments are necessary to implement the FMP in accordance with the Magnuson-Stevens Act. The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this final rule. This action approves fishing years 2021 and 2022 operations plans for 16 groundfish sectors in the Northeast multispecies fishery and allocates ACE for fishing year 2021. This rulemaking was delayed by the sector roster deadline (March 8, 2021). We must have preliminary sector rosters for the upcoming fishing year in order to allocate preliminary ACE to sectors. Sectors are prohibited from fishing without an approved operations plan and ACE allocations, as such, timely implementation is necessary to ensure that sectors may fish at the start of the 2021 fishing year on May 1, 2021. If sectors were prohibited from fishing while waiting for the rule to take effect, there would be significant disruption to the fishery along with negative

economic impacts, thus undermining the intent of the rule. The approval of sector operations plans occurs annually in accordance with regulations implementing Amendment 16 to the Northeast Multispecies FMP. Industry members and other stakeholders are aware of and familiar with these proceedings and expect them to occur in a timely manner.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648-0605; Northeast Multispecies Amendment 16.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 26, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.2, add definitions for “electronic monitoring data,” “raw,” and “video reviewer” in alphabetical order to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Electronic monitoring data* means the data that are created in the collection of fishery-dependent data by electronic monitoring systems during fishing operations, including the video, images, and other sensor data, as well as the metadata that provides information (*e.g.*, trip sail date, vessel information) about the raw data.

\* \* \* \* \*

*Raw*, with respect to electronic monitoring, means the original, unaltered video footage, images, and other sensor data collected by an electronic monitoring system.

\* \* \* \* \*

*Video reviewer* means any electronic monitoring service provider staff approved/certified by NMFS for providing electronic monitoring video review services consistent with electronic monitoring program requirements.

\* \* \* \* \*

3. In § 648.14, revise paragraph (k)(14)(x) and add paragraphs (k)(14)(xii) and (xiii) to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(k) \* \* \*

(14) \* \* \*

(x) Leave port to begin a trip before an at-sea monitor has arrived and boarded the vessel if assigned to carry an at-sea monitor for that trip, or without an operational electronic monitoring system installed on board, as specified in § 648.87(b)(5)(iii)(A).

\* \* \* \* \*

(xii) Fail to comply with the electronic monitoring system requirements as specified in § 648.87(b)(5)(iii)(A)(2).

(xiii) Fail to comply with the vessel monitoring plan requirements as specified in § 648.87(b)(5)(iii)(A)(3).

\* \* \* \* \*

4. In § 648.87:

- a. Revise paragraphs (b)(1)(v)(B) introductory text, (b)(1)(v)(B)(I) introductory text, (b)(4) introductory text, (b)(4)(i)(D) through (J), (b)(4)(ii) introductory text, (b)(4)(ii)(A)(6), (b)(4)(ii)(B) through (D), (b)(4)(ii)(G), and (b)(4)(ii)(H)(I);
- b. Add paragraphs (b)(4)(ii)(H)(4) and (b)(4)(iv); and
- c. Revise paragraphs (b)(5)(iii)(A), (b)(5)(iii)(B)(2), and (b)(5)(iv)(B).

The revisions and additions read as follows:

**§ 648.87 Sector allocation.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) \* \* \*

(B) *Independent third-party monitoring program.* A sector must develop and implement an at-sea or electronic monitoring program that is satisfactory to, and approved by, NMFS for monitoring catch and discards and utilization of sector ACE, as

specified in this paragraph (b)(1)(v)(B). The primary goal of the at-sea/electronic monitoring program is to verify area fished, as well as catch and discards by species and gear type, in the most cost-effective means practicable. All other goals and objectives of groundfish monitoring programs at § 648.11(l) are considered equally-weighted secondary goals. The details of any at-sea or electronic monitoring program must be specified in the sector's operations plan, pursuant to paragraph (b)(2)(xi) of this section, and must meet the operational standards specified in paragraph (b)(5) of this section. Electronic monitoring may be used in place of at-sea monitors if the technology is deemed sufficient by NMFS for a specific trip type based on gear type and area fished, in a manner consistent with the Administrative Procedure Act. The level of coverage for trips by sector vessels is specified in paragraph (b)(1)(v)(B)(I) of this section. The at-sea/electronic monitoring program shall be reviewed and approved by the Regional Administrator as part of a sector's operations plans in a manner consistent with the Administrative Procedure Act. A service provider providing at-sea or electronic monitoring services pursuant to this paragraph (b)(1)(v)(B) must meet the service provider standards specified in paragraph (b)(4) of this section, and be approved by NMFS in a manner consistent with the Administrative Procedure Act.

*(I) Coverage levels.* Except as specified in paragraph (b)(1)(v)(B)(I)(i) of this section, any service provider providing at-sea or electronic monitoring services required under this paragraph (b)(1)(v)(B)(I) must provide coverage that is fair and equitable, and distributed in a statistically random manner among all trips such that coverage is representative of fishing activities by all vessels within each sector and by all operations of vessels operating in each sector throughout the fishing year. Coverage levels for an at-sea or electronic monitoring program, including video review requirements, shall be specified by NMFS, pursuant to paragraph (b)(1)(v)(B)(I)(i) of this section, but shall be less than 100 percent of all sector trips. In the event that a NMFS-sponsored observer

and a third-party at-sea monitor are assigned to the same trip, only the NMFS observer must observe that trip. If an at-sea monitor is assigned to a particular trip, a vessel may not leave port without the at-sea monitor on board. If a vessel is using electronic monitoring to comply with the monitoring requirements of this part, it may not leave port without an operational electronic monitoring system on board.

\* \* \* \* \*

(4) *Independent third-party monitoring provider standards.* Any service provider intending to provide at-sea/electronic monitoring services described in paragraph (b)(1)(v) of this section must apply to and be approved/certified by NMFS in a manner consistent with the Administrative Procedure Act. NMFS shall approve/certify service providers, at-sea monitors, or video reviewers as eligible to provide sector monitoring services specified in this part and can disapprove/decertify service providers, individual at-sea monitors, or video reviewers through notice in writing to individual service providers/monitors/video reviewers if the following criteria are no longer being met:

(i) \* \* \*

(D) A statement, signed under penalty of perjury, from each owner, board member, and officer describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer, at-sea monitor, or video reviewer; or as an observer, at-sea, or electronic monitoring service provider;

(E) A description of any prior experience the applicant may have in placing individuals or monitoring equipment in remote field and/or marine work environments including, but not limited to, recruiting, hiring, deployment, equipment installation and maintenance, and personnel administration;



(F) A description of the applicant's ability to carry out the responsibilities and duties of a sector monitoring service provider and the arrangements to be used, including whether the service provider is able to offer at-sea or electronic monitoring services;

(G) Evidence of adequate insurance (copies of which shall be provided to the vessel owner, operator, or vessel manager, when requested) to cover injury, liability, and accidental death to cover at-sea monitors (including during training) and electronic monitoring staff who provide electronic monitoring services to vessels; vessel owner; and service provider. NMFS will determine the adequate level of insurance and notify potential service providers;

(H) Proof of benefits and personnel services provided in accordance with the terms of each monitor's or electronic monitoring staff's contract or employment status;

(I) Proof that the service provider's at-sea monitors or video reviewers have passed an adequate training course sponsored by the service providers to the extent not funded by NMFS that is consistent with the curriculum used in the current yearly NEFOP training course, unless otherwise specified by NMFS;

(J) An Emergency Action Plan describing the provider's response to an emergency with any at-sea monitor or electronic monitoring staff, including, but not limited to, personal injury, death, harassment, or intimidation; and

\* \* \* \* \*

(ii) *Service provider performance requirements.* At-sea and electronic monitoring service providers must be able to document compliance with the following criteria and requirements:

(A) \* \* \*

(6) For service providers offering catch estimation or at-sea or electronic monitoring services, a service provider must be able to determine an estimate of discards

for each trip and provide such information to the sector manager and NMFS, as required by this section.

(B) The service provider must ensure that at-sea monitors or video reviewers remain available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least 2 weeks following any monitored trip/offload or electronic monitoring trip report submission. Electronic monitoring service providers must ensure that electronic monitoring data and reports are retained for a minimum of 12 months after catch data is finalized for the fishing year. NMFS will notify providers of the catch data finalization date each year. The service provider must provide NMFS access to electronic monitoring data upon request;

(C) The service provider must report possible at-sea or electronic monitoring staff harassment; discrimination; concerns about vessel safety or marine casualty; injury; and any information, allegations, or reports regarding at-sea or electronic monitoring staff conflict of interest or breach of the standards of behavior to NMFS and/or the sector manager, as specified by NMFS;

(D) The service provider must submit to NMFS, if requested, a copy of each signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the service provider and those entities requiring services (*i.e.*, sectors and participating vessels) and between the service provider and specific dockside, roving, at-sea, or electronic monitoring staff;

\* \* \* \* \*

(G) With the exception of a service provider offering reporting, dockside, at-sea, or electronic monitoring services to participants of another fishery managed under Federal regulations, a service provider's owner(s), board member(s), and officers must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, fishing vessels, dealers, shipping companies, sectors, sector

managers, advocacy groups, or research institutions and may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing-related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of service providers;

(H) \* \* \*

(I) At-sea monitor and other approved monitoring equipment deployment or video review levels, including the number of refusals and reasons for such refusals;

\* \* \* \* \*

(4) Electronic monitoring data and reports.

\* \* \* \* \*

(iv) *Standards for individual electronic monitoring video reviewers.* For an individual to be approved/certified as an electronic monitoring video reviewer, the service provider must demonstrate that each potential reviewer meets the requirements described in paragraphs (b)(4)(iii)(A), (B), (E), and (F) of this section.

\* \* \* \* \*

(5) \* \* \*

(iii) \* \* \*

(A) *Vessel requirements – (I) Pre-trip notification.* In addition to all other reporting/recordkeeping requirements specified in this part, to facilitate the deployment of at-sea monitors and electronic monitoring equipment pursuant to paragraph (b)(1)(v)(B)(I) of this section, the operator of a vessel fishing on a sector trip must provide at-sea/electronic monitoring service providers with at least the following information: The vessel name, permit number, trip ID number in the form of the VTR serial number of the first VTR page for that trip or another trip identifier specified by NMFS, whether a monkfish DAS will be used, and an estimate of the date/time of

departure in advance of each trip. The timing of such notice shall be sufficient to allow ample time for the service provider to determine whether an at-sea monitor or electronic monitoring equipment will be deployed on each trip and allow the at-sea monitor or electronic monitoring equipment to prepare for the trip and get to port, or to be installed on the vessel, respectively. The details of the timing, method (*e.g.*, phone, email, etc.), and information needed for such pre-trip notifications shall be included as part of a sector's yearly operations plan. If a vessel has been informed by a service provider that an at-sea monitor or electronic monitoring equipment has been assigned to a particular trip pursuant to paragraph (b)(5)(iii)(B)(I) of this section, the vessel may not leave port to begin that trip until the at-sea monitor has arrived and boarded the vessel, or the electronic monitoring equipment has been properly installed.

(2) *Electronic monitoring system requirements.* A vessel operator using electronic monitoring to meet sector monitoring requirements must ensure that the electronic monitoring system is operational for every trip, including:

(i) Ensuring that the electronic monitoring system is operating, recording, and retaining the recording for the duration of every trip. A vessel must not fish without an operational electronic monitoring system recording and retaining the recording of activity onboard, unless issued a waiver by NMFS;

(ii) Conducting a system check of the electronic monitoring system prior to departing on a fishing trip to ensure it is fully operational, including ensuring there is sufficient video storage capacity to retain the recording of the entire fishing trip;

(iii) Ensuring camera views are unobstructed and clear, including ensuring lighting is sufficient in all circumstances to illuminate catch, so that catch and discards are visible and may be identified and quantified as required; and

(iv) Ensuring that no person tampers with, disconnects, or destroys any part of the electronic monitoring system, associated equipment, or recorded data.

(3) *Vessel monitoring plan requirements for electronic monitoring vessels.* A vessel must have a NMFS-approved vessel monitoring plan to meet sector monitoring requirements.

(i) The vessel monitoring plan must be onboard the vessel at all times.

(ii) The vessel operator and crew must comply with all catch handling protocols and other requirements described in the vessel monitoring plan, including sorting catch and processing any discards within view of the cameras and consistent with the vessel monitoring plan.

(iii) Modifications to any vessel monitoring plan must be approved by NMFS prior to such vessel fishing under the conditions of the new vessel monitoring plan.

(iv) A vessel owner or operator using electronic monitoring to meet sector monitoring requirements must submit all electronic monitoring data to the service provider in accordance with the electronic monitoring program requirements specified by NMFS.

(v) A vessel owner or operator must make the electronic monitoring system, associated equipment, electronic monitoring data, or vessel monitoring plan available to NMFS for inspection, upon request.

\* \* \* \* \*

(B) \* \* \*

(2) *At-sea/electronic monitoring report.* A report detailing area fished and the amount of each species kept and discarded shall be submitted electronically in a standard acceptable form to the appropriate sector and NMFS within 48 hour of the completion of the trip, or as otherwise instructed by the Regional Administrator. The data elements to be collected and the format for submission shall be specified by NMFS and distributed to all approved at-sea/electronic monitoring service providers and sectors. At-sea/electronic

monitoring data shall not be accepted until such data pass automated NMFS data quality checks.

(iv) \* \* \*

(B) *At-sea monitoring service provider requirements.* An at-sea monitor must complete a pre-trip vessel safety checklist provided by NMFS before an at-sea monitor can leave port onboard a vessel on a sector trip. If the vessel fails a review of safety issues pursuant to this paragraph (b)(5)(iv)(B), an at-sea monitor cannot be deployed on that vessel for that trip.

\* \* \* \* \*

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